



**DEPARTMENT OF THE ARMY  
JOINT FORCES HEADQUARTERS  
KENTUCKY ARMY NATIONAL GUARD  
BOONE NATIONAL GUARD CENTER  
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FRANKFORT, KENTUCKY 40601-6168**

KG-HRO-AGR

6 April 2007

MEMORANDUM FOR All Commanders, Supervisors, and AGR Personnel, KyARNG

SUBJECT: (KYARNG Log Number P07-011) Memorandum of Instruction – Policy for Title 32 ARNG Full Time National Guard Duty (AGR) Soldiers Performing State Active Duty (SAD)

1. This memorandum is applicable to all Kentucky Army National Guard Personnel serving on Active/Guard Reserve (AGR) duty under title 32 USC 502(f).
2. References:
  - a. Title 10, United States Code (USC), Section 12310
  - b. Title 32, USC, Section 502 (f)
  - c. AR 135-18, para 4-11, The Active Guard Reserve (AGR) Program, 19 Jun 96.
  - d. National Guard Regulation (NGR) 600-5, the Active Guard and Reserve (AGR) Program Title 32, Full-Time National Guard Duty, 20 February 1990.
  - e. AR 623-3, Evaluation Reporting System, 15 May 2006
3. BLUF: AGR Soldiers can no longer be paid for State Active Duty (SAD), under any circumstances. However, AGR Soldiers can and will continue to perform State Active missions to meet mission requirements, but only when one of the following conditions exists:
  - a. There is an emergency affecting life and property
  - b. The unit is called to SAD by the Governor
  - c. The State Active Duty is part of the AGR Soldier's regular duties
  - d. KYNG equipment or property is used in support of a SAD mission and AGR Soldiers are required to transport, operate, maintain or secure the equipment.
  - e. These circumstances are addressed in paragraphs 4-9 below.

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4. The purpose of this memorandum is to update NGR 600-5, Chapter 3-3. Current legal opinion prohibits Full-Time National Guard Duty (here after referred to as AGR) AGR Soldiers from performing State Active Duty (SAD) missions outside of their normal day-to-day operations, to include those AGR Soldiers assigned to Recruiting and Retention. These normal day-to-day operations (for the purpose of organizing, administering, recruiting, or training) are codified under Title 10 USC. In a memorandum dated 20 October 2002, the Department of the Army Office of the Judge Advocate General (OTJAG) stated that AGR Soldiers could not lawfully serve on SAD pay status, even if on leave because it violated fiscal law. Additionally, AGR Soldiers can not individually volunteer for SAD missions. All attempts by NGB to obtain legislative relief at the DOD level were unsuccessful.

5. Emergency doctrine was developed and implemented by NGB to address the recent increase and severity of natural disasters within our borders. Under this emergency doctrine, AGR Soldiers can respond to an emergency situation when necessary to save human life, prevent immediate human suffering, or lessen major property damage or destruction. However, upon stabilization, i.e. within a reasonable time period, individually activated AGR Soldiers should be replaced with an M-Day (Traditional) Soldier, unless the SAD mission is a unit mission or requires the participation of the AGR Soldier in their M-day capacity. For example, if a platoon is activated for a SAD mission, and the Platoon Sergeant is AGR, he or she will participate in the SAD mission. They will not be in a SAD pay status.

6. Title 32 ARNG AGR Soldiers may support SAD missions in an AGR status while performing their statutory duties codified under Title 10 USC and within the capacity of the paragraph and line number of their assigned unit when one of the following conditions exist:

a. The Governor declares a state of emergency.

b. The Governor activates the AGR Soldier's modified table of organization and equipment or table of distribution and allowances (MTOE / TDA) unit of assignment. In many cases, this will be done whenever a significant portion of the unit is required for a SAD mission – for example a squad, section, or platoon.

c. ARNG equipment or property is loaned or leased in support of a SAD mission and AGR Soldiers are required to transport, operate, maintain, or secure the equipment. This includes operations wherever the SAD mission is taking place. AGR Soldiers will also perform whatever duties are required as part of their usual unit duties, to prepare a unit for SAD and return it from SAD. This includes staging of vehicles or equipment, coordinating or conducting maintenance operations, performing personnel and administrative actions.

7. AGR Officers and enlisted Soldiers supporting SAD missions for more than 59 total days are required to obtain a letter of input from the SAD mission supervisor for the completion of their Officer Evaluation Report (OER) or Non-Commissioned Officer Evaluation Report (NCOER), IAW AR 623-3, Table 3-1. This is not required if the SAD mission evaluation chain is the same as the M-day evaluation chain.

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8. Under Title 32 USC, 502(f), AGR Soldiers perform AGR duties. They should not be placed on individual SAD missions and should never be placed in a SAD pay status. To place these AGR Soldiers in a SAD status is an inappropriate use of federal funds and possible dual compensation or Anti-Deficiency Act violations. This policy applies to all SAD missions, not just emergency type missions. Federal law prohibits dual compensation for AGRs in a SAD status. The Kentucky National Guard Staff Judge Advocate (SJA) has confirmed that no AGR is allowed to be compensated financially for performing SAD. In the past an AGR had to be on leave to get reimbursed by the State but until this legal opinion is reversed by Congress we are not allowed dual compensation.

9. Supervisors are authorized to adjust the work schedule of AGR Soldiers required to support SAD Missions in a non dual compensated status; IAW 600-8-10 paragraph 5-29.

10. Publication of this policy guidance revises ARH Memo 04-14, Policy for Title 32 ARNGUS AGR Soldiers performing State Active Duty (SAD). This policy supersedes all previous Human Resource Office (HRO) guidance, State policy and practices.

11. Point of Contact for all HRO actions are LTC Allen Boone x1142 or MAJ Shontelle Adams at x1340. LTC Burd x1580, J3-MSCA, is the POC for all issues or questions concerning State Active Duty.

FOR THE ADJUTANT GENERAL:

E-Signed by {Donald R. Conover}  
VERIFY authenticity with ApproveIt

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DONALD R. CONOVER  
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Human Resources Officer